



## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2021-0109; Notice No. 2022-10]

### Hazardous Materials: Frequently Asked Questions - Applicability of the Hazardous Materials Regulations; Extension of Comment Period and Notice of Public Informational Webinar

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

**ACTION:** Notice; extension of comment period and informational webinar announcement.

**SUMMARY:** On March 22, 2022, PHMSA announced an initiative to convert historical letters of interpretation applicable to the Hazardous Materials Regulations (HMR) that have been issued to specific stakeholders into broadly applicable frequently asked questions on its website.

PHMSA requested comment on the initiative and input on the prioritization of future sets of frequently asked questions. In this notice, PHMSA is extending the comment period from May 23, 2022, until July 22, 2022. In addition, PHMSA plans to host a webinar to discuss the process and intent of this initiative with stakeholders on June 27, 2022.

**DATES:** Interested persons are invited to submit comments on or before July 22, 2022.

Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** You may submit comments identified by the Docket Number PHMSA-2021-0109 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 1-202-493-2251
- *Mail:* Docket Management System; U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE, Washington, DC 20590.
- *Hand Delivery:* Docket Management System; Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the agency name and Docket Number (PHMSA-2021-0109) for this notice. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to the Federal Docket Management System (FDMS) and will include any personal information you provide.

*Docket:* For access to the dockets to read background documents or comments received, go to <http://www.regulations.gov> or DOT’s Docket Operations Office (see **ADDRESSES**).

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

*Confidential Business Information (CBI):* CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as “CBI.” Please mark each page of your submission containing CBI as “PROPIN.” Submissions containing CBI should be sent to Arthur Pollack, Standards and Rulemaking Division, (202) 366-8553, Pipeline and Hazardous

Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001. Any commentary that PHMSA receives which is not specifically designated as CBI will be placed in the public docket for this notice.

**FOR FURTHER INFORMATION CONTACT:** Arthur Pollack, Standards and Rulemaking Division, (202) 366-8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:**

**I. Webinar Details and Public Participation**

The webinar will take place on June 27, 2022, at 11:00 a.m. EST and will be open to the public. Attendees must register on the meeting website at [https://opsweb.phmsa.dot.gov/hm\\_seminars/faq\\_webinar.asp](https://opsweb.phmsa.dot.gov/hm_seminars/faq_webinar.asp).

**II. Background**

Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*) directs the Secretary of Transportation (“the Secretary”) to establish regulations for the safe and secure transportation of hazardous materials in commerce. The Secretary is authorized to apply those regulations to (1) persons who transport hazardous materials in commerce, (2) persons who cause hazardous materials to be transported in commerce, (3) persons who manufacture or maintain a packaging or a component of a packaging that is represented, marked, certified, or sold as qualified for use in the transportation of a hazardous material in commerce, (4) persons who indicate by marking or other means that a hazardous material being transported in commerce is present in a package or transport conveyance when it is not, and (5) persons who tamper with a package or transport conveyance used to transport hazardous materials in commerce or a required marking, label, placard, or shipping description.

In 49 CFR 1.97, the Secretary delegated authority to issue regulations for the safe and secure transportation of hazardous materials in commerce to the PHMSA Administrator. The PHMSA Administrator issues the HMR under that delegated authority. The HMR prescribes requirements for the safe transportation in commerce of hazardous materials, including provisions for classification, packaging, and hazard communication.

To facilitate its safety mission and promote better awareness of its programs and compliance requirements, the Office of Hazardous Materials Safety (OHMS) periodically issues agency guidance in the *Federal Register* and on its publicly available website<sup>1</sup> for use by the regulated community, PHMSA staff, and federal, state, and local partners. This information is non-binding material given to the public pertaining to information and resources useful to comply with the HMR and is also used to make the public aware of safety issues or best practices. PHMSA issues this information through posted frequently asked questions (FAQs), advisory bulletins, publications, and policy manuals. PHMSA also answers questions from stakeholders through its staff and the Hazardous Materials Information Center (HMIC)<sup>2</sup> and by issuing letters of interpretation (LOIs). As provided in 49 CFR 105.20 (Guidance and Interpretations), a member of the public may request information and answers to questions on HMR compliance by contacting the OHMS Standards and Rulemaking Division or the HMIC.<sup>3</sup> OHMS receives an average of 250 requests for LOIs each year. Some of these requests for interpretations have previously been asked, answered, and published on PHMSA's Online Code

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<sup>1</sup> [https://www.phmsa.dot.gov/guidance?keywords=security&issued\\_date\\_from=&field\\_issued\\_date\\_value\\_1=](https://www.phmsa.dot.gov/guidance?keywords=security&issued_date_from=&field_issued_date_value_1=)

<sup>2</sup> The HMIC can be reached at 1-800-467-4922 and [infocntr@dot.gov](mailto:infocntr@dot.gov). For additional information visit: <https://www.phmsa.dot.gov/standards-rulemaking/hazmat/hazardous-materials-information-center>

<sup>3</sup> To request a formal letter of interpretation, persons may also write to: Mr. Shane Kelley, Director, Standards and Rulemaking Division, U.S. DOT/PHMSA (PHH-10), 1200 New Jersey Avenue, SE East Building, 2nd Floor, Washington, DC 20590. To obtain information and answers pertaining to statute compliance and preemption, persons must, as prescribed by 49 CFR 105.20(b), contact the office of the Chief Counsel at: Office of the Chief Counsel, U.S. DOT/PHMSA (PHC-10), 1200 New Jersey Avenue, SE East Building, Washington, DC 20590, or at (202) 366-4400.

of Federal Regulations (oCFR) website at <https://www.phmsa.dot.gov/standards-rulemaking/hazmat/phmsas-online-cfr-ocfr>.

The purpose of the FAQ initiative is to optimize the effectiveness, reach, and impact of the OHMS LOI process. Through publishing FAQs, PHMSA will memorialize in broadly applicable guidance its historical LOIs for, and applicable to, specific stakeholders regulated by the HMR. Specifically, this initiative adapts currently available stakeholder engagement functions to more directly appeal to a broader regulated community, develop a systematic process in managing/curating agency information that can be incorporated conveniently into existing workflows, and create helpful tools for current stakeholders. The success of this initiative will be measurable by monitoring PHMSA's website engagement, the rate of incoming calls to the HMIC, and the volume of incoming LOI requests. A successful project should see an increase in website engagement with either static or reduced rates of calls to the HMIC and a reduced volume of incoming LOI requests. In addition, the interpretation workflow should reflect more efficient processing and productivity.

### **III. Federal Register Notice**

On March 22, 2022, PHMSA published Notice No. 2022-02 [87 FR 16308] announcing an initiative to publish FAQs on its website to facilitate better public understanding and awareness of the hazardous materials regulations (HMR; 49 CFR parts 171 through 180). The FAQs in the notice are intended to clarify, explain, and promote better understanding of the HMR. FAQs are not substantive rules, and do not create legally enforceable rights, assign duties, or impose new obligations not otherwise contained in the existing regulations and standards, but are provided to help the regulated community understand how to comply with the regulations.

PHMSA is creating a repository of these questions, which will reduce the need for issuing duplicative LOIs to multiple stakeholders and will assist PHMSA in streamlining the use of its resources by significantly reducing frequently asked LOIs. This initiative will provide

additional value to PHMSA's oCFR tool found at <https://www.phmsa.dot.gov/standards-rulemaking/hazmat/phmsas-online-cfr-ocfr>. The oCFR tool is an interactive web-based application that allows users to navigate with a single click between all content, including LOIs connected to an HMR citation. The oCFR tool includes the ability to sort, filter, and export search results.

PHMSA expects this initiative to ultimately allow the agency to devote resources to other hazardous materials transportation safety projects such as petitions for rulemakings, public outreach and engagement, and regulatory and policy improvements.

#### **IV. Comment Period Extension**

PHMSA initially provided a 60-day comment period for the March 22, 2022, Federal Register notice with a May 23, 2022, closing date. In response to a request to extend the comment period from the Dangerous Goods Advisory Council, PHMSA is extending the comment period an additional 60 days. The comment period will now close on July 22, 2022. This extension provides the public additional time to provide comment on the FAQ initiative. In addition, PHMSA will host a webinar to provide detailed information on the process and intent of the FAQ initiative. The webinar will be held on June 27, 2022.

Signed in Washington, DC on June 8, 2022, under authority delegated in 49 CFR 1.97.

**William S. Schoonover,**

*Associate Administrator for Hazardous Materials Safety,*

*Pipeline and Hazardous Materials Safety Administration.*